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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 10th March, 1986:—

Bill No. XII of 1986

A Bill to amend the Administrative Tribunals Act, 1985.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Administrative Tribunals (Amendment) Act, 1986.

(2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 22nd day of January, 1986.

Amendment of long title.

13 of 1985

2. In the Administrative Tribunals Act, 1985 (hereinafter referred to as the principal Act), in the long title, for the words "any corporation owned or controlled by the Government", the words, figures and letter "any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution" shall be substituted.

Amendment of section 2.

3. In section 2 of the principal Act, clause (*b*) shall be omited and shall be deemed to have been omitted with effect from the 1st day of November, 1985.

Amendment of section 3.

4. In section 3 of the principal Act,—

(*a*) clause (*a*) shall be re-lettered as clause (*aa*), and before clause (*aa*) as so re-lettered, the following clause shall be inserted, namely:—

'(*a*) "Administrative Member" means a Member of a Tribunal who is not a Judicial Member within the meaning of clause (*i*);';

(*b*) for clause (*i*), the following clauses shall be substituted, namely:—

'(*i*) "Judicial Member" means a Member of a Tribunal appointed as such under this Act, and includes the Chairman or a Vice-Chairman who possesses any of the qualifications specified in sub-section (*3*) of section 6;

(*ia*) "Member" means a Member (whether Judicial or Administrative) of a Tribunal, and includes the Chairman and a Vice-Chairman;';

(*c*) clause (*n*) shall be omitted;

(*d*) in clause (*q*), after the words "any corporation", the words "or society" shall be inserted;

(*e*) after clause (*r*), the following clause shall be inserted namely:—

'(*rr*) "society" means a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State;'. 21 of 1860.

Amendment of section 4.

5. In section 4 of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) Notwithstanding anything contained in the foregoing provisions of this section or sub-section (*1*) of section 5, the Central Government may,—

(*a*) with the concurrence of any State Government, designate, by notification, all or any of the Members of the Bench or Benches of the State Administrative Tribunal established for that State under sub-section (*2*) as Members of the Bench or Benches of the Central Administrative Tribunal in respect of that State and the same shall exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act;

(*b*) on receipt of a request in this behalf from any State Government, designate. by notification, all or any of the Members of the Bench or Benches of the Central Administrative Tribunal functioning in that State as the Members of the Bench or Benches of the State Administrative Tribunal for that State and the same shall exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for that State by or under this Act,

and upon such designation, the Bench or Benches of the State Administrative Tribunal or, as the case may be, the Bench or Benches of the Central Administrative Tribunal shall be deemed, in all respects, to be the Central Administrative Tribunal, or the State Administrative Tribunal for that State established under the provisions of article 323A of the Constitution and this Act.

(6) Every notification under sub-section (5) shall also provide for the apportionment between the State concerned and the Central Government of the expenditure in connection with the Members common to the Central Administrative Tribunal and the State Administrative Tribunal and such other incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient.".

Amendment of section 5.

6. In section 5 of the principal Act, with effect from the 1st day of November, 1985,—

(*a*) in sub-section (*1*), for the words "and other Members", the words "and Judicial and Administrative Members" shall be substituted;

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.";

(*c*) sub-section (*3*), shall be omitted;

(*d*) in sub-section (*4*),—

(*i*) in the opening portion, the words, brackets and figure "or sub-section (*3*)" shall be omitted;

(*ii*) for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Administrative Member, of any other Bench;";

(*iii*) for clause (*c*), the following clause shall be substituted, namely:—

"(*c*) may authorise the Vice-Chairman or the Judicial Member or the Administrative Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, the Judicial Member or the Administrative Member of another Bench; and";

(*iv*) in clause (*d*),—

(*1*) for the words "three Members", the words "two Members" shall be substituted;

(2) the following proviso shall be inserted at the end, namely:—

"Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.";

(e) sub-section (5), shall be omitted;

(f) in sub-section (6),—

(i) in the opening paragraph, for the words "an additional Bench", the words "a Bench" shall be substituted;

(ii) in the proviso, for the words "three Members", the words "two Members" shall be substituted;

(g) for sub-section (7), the following sub-sections shall be substituted, namely:—

"(7) Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the principal Bench), Allahabad, Calcutta, Madras New Bombay and at such other places as the Central Government may, by notification, specify.

(8) Subject to the other provisions of this Act, the places at which the principal Bench and other Benches of a State Administrative Tribunal shall ordinarily sit shall be such as the State Government may, by notification, specify.".

Amendment of section 6.

7. In section 6 of the principal Act,—

(a) in sub-section (2),—

(i) after clause (b), the following clause shall be inserted, namely:—

"(bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or";

(ii) in clause (c), for the words "a Member", the words "a Judicial Member or an Administrative Member" shall be substituted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years.

(*3A*) A person shall not be qualified for appointment as an Administrative Member unless he—

(*a*) has, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or

(*b*) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India,

and shall, in either case, have adequate administrative experience.";

(c) in sub-section (*4*) and (*5*), for the words "The Chairman", the words, brackets and figure "Subject to the provisions of sub-section (*7*), the Chairman" shall be substituted;

(*d*) in sub-section (*6*), after the words, brackets and figures "under sub-section (*3*) of section 4", the words brackets and figure "and subject to the provisions of sub-section (*7*)" shall be inserted;

(*e*) after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(*7*) No appointment of a person possessing the qualifications specified in sub-section (*3*) as the Chairman, a Vice-Chairman or a Judicial Member shall be made except after consultation with the Chief Justice of India.".

Amendment of section 11.

8. In section 11 of the principal Act, in the *Explanation*, after the words "any corporation", the words "or society" shall be inserted.

Amendment of section 12.

9. In section 12 of the principal Act,—

(*a*) in the opening paragraph, the words "principal Bench and each of the additional" shall be omitted;

(*b*) in the proviso, for the words "the Vice-Chairman, subject to the condition that the Vice-Chairman", the words "the Vice-Chairman or any officer of the Tribunal, subject to the condition that the Vice-Chairman or such officer" shall be substituted.

Amendment of section 13.

10. In section 13 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Chairman.".

Amendment of section 14.

11. In section 14 of the principal Act,—

(*a*) the words and figures "under article 136 of the Constitution", wherever they occur, shall be omitted;

(*b*) after the word "corporation", wherever it occurs, the words "or society" shall be inserted;

(*c*) after the word "corporations", wherever it occurs, the words "or societies" shall be inserted;

(*d*) in sub-section (*1*), after clause (c), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of November, 1985, namely:—

'*Explanation.*—For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.'.

Amendment of section 15.

12. In section 15 of the principal Act,—

(*a*) the words and figures "under article 136 of the Constitution", wherever they occur, shall be omitted;

(*b*) after the word "corporation", wherever it occurs, the words "or society" shall be inserted;

(c) after the word "corporations", wherever it occurs, the words "or societies" shall be inserted.

Amendment of section 18.

13. In sub-section (*1*) of section 18 of the principal Act,—

(*a*) for the words "any additional Bench or Benches of a Tribunal is or are constituted", the words "any Benches of a Tribunal are constituted" shall be substituted;

(*b*) the words "principal Bench and the additional Bench or additonal" shall be omitted.

Amendment of section 19.

14. In section 19 of the principal Act,—

(*a*) in the *Explanation* below sub-section (*1*), after the word "corporation", at both the places where it occurs, the words "or society" shall be inserted;

(*b*) in sub-section (*2*), for the words "as may be prescribed by the Central Government", the words "in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government" shall be substituted;

(*c*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) On receipt of an application under sub-section (*1*), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.".

Amendment of section 22.

15. In section 22 of the principal Act,—

(*a*) in sub-section (*2*), for the words "after hearing of oral arguments if any, allowed by the Tribunal in the circumstances of the

case", the words "after hearing such oral arguments as may be advanced" shall be substituted;

(*b*) in sub-section (*3*), for the words "holding any inquiry", the words "discharging its functions under this Act" shall be substituted.

Amendment of section 23.

16. In sub-section (*2*) of section 23 of the principal Act,—

(*a*) after the word "corporation", the words "or society" shall be inserted;

(*b*) for the portion beginning with the words "may appoint" and ending with the words "before a Tribunal", the words "may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised by it may present its case with respect to any application before a Tribunal" shall be substituted.

substitution of new sections for sections 25 and 26

17. For sections 25 and 26 of the principal Act, the following sections shall be substituted, namely:—

Power of Chairman to transfer cases from one Bench to another.

"25. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority.

26. If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.".

Amendment of section 27.

18. In section 27 of the principal Act, for the words "the order of a Tribunal finally disposing of an application", the words and brackets "the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order" shall be substituted.

Amendment of section 28.

19. In section 28 of the principal Act, for the words, brackets and figures "no court (except the Supreme Court under article 136 of the Constitution) shall have", the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of November, 1985, namely:—

"no court except—

(*a*) the Supreme Court; or

(*b*) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, 14 of 1947.

shall have".

Amendment of section 29.

20. In section 29 of the principal Act,—

(*a*) in sub-section (*1*), in the proviso the words "or the Supreme Court" shall be omitted;

(*b*) in sub-section (*2*),—

(*i*) after the word "corporation", wherever it occurs, the words "or society" shall be inserted;

(*ii*) in the proviso, the words "or the Supreme Court" shall be omitted.

Insertion of new section 29A.

21. After section 29 of the principal Act, the following section shall be inserted, namely:—

Provision for filing of certain appeals.

"29A. Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie—

(*a*) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(*b*) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.".

Amendment of section 35.

22. In sub-section (*2*) of section 35 of the principal Act,—

(*a*) in clause (*a*), for the words "three Members", the words "two Members" shall be substituted:

(*b*) in clause (*d*), for the words "and the fees payable in respect of such application", the words "and the fees payable in respect of the filing of such application or for the service or execution of processes" shall be substituted.

Amendment of section 36.

23. In section 36 of the principal Act, in clause (*a*), the words "principal Bench and the additional" shall be omitted.

Provisions as to existing Members of Central Administrative Tribunal.

24. Every person holding office as Chairman, Vice-Chairman or other Member of the Central Administrative Tribunal immediately before the commencement of this Act shall,—

(*a*) if he possesses any of the qualifications specified for appointment as a Judicial Member under the principal Act, as amended by this Act, be deemed, on and from such commencement, to have been appointed as a Judicial Member of such Tribunal; and

(*b*) in any other case, be deemed, on and from such commencement, to have been appointed as an Administrative Member of such Tribunal.

Validation.

25. Any thing done or any action taken (including any application admitted or orders passed) by the Central Administrative Tribunal or any of its Bench or Benches immediately before the commencement of this Act in the exercise or purported exercise of its jurisdiction, powers and authority conferred by or under the principal Act shall be deemed to have been validly done or taken as if the provisions of the principal Act, as amended by this Act, had been in force at all material times and, accordingly, anything done or any action taken by the said Tribunal or any of its Bench or Benches shall not be called in question merely on the ground that—

(*a*) the Bench or Benches of such Tribunal had not been property constituted, or

(*b*) the said Tribunal had no jurisdiction to adjudicate or try any dispute or complaint or to hear any appeals in relation to such dispute or complaint.

Repeal and savings.

1 of 1986.

26. (*1*) The Administrative Tribunals (Amendment) Ordinance, 1986, is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Central Administrative Tribunal, with five Benches, was established on the 1st November, 1985 in pursuance of the provisions of the Administrative Tribunals Act, 1985. Prior to its establishment, writ petitions were filed in various High Courts as well as in the Supreme Court challenging the constitutional validity of article 323A of the Constitution and the provisions of the Administrative Tribunals Act. The main contention in the writ petitions was that the writ jurisdiction of the Supreme Court under article 32 of the Constitution as well as in the High Courts under article 226 of the Constitution cannot be taken away even by an amendment of the Constitution. Although the Supreme Court, by an interim order, stayed the transfer of writ petitions filed in the Supreme Court under article 32 of the Constitution to the Central Administrative Tribunal, it did not stay the transfer of writ petitions under article 226 subject to the condition that the Government would make certain amendments in the Act. One of the amendments suggested by the Court was that each case in the Tribunal must be heard by a Bench consisting of one Judicial Member and one non-Judicial Member and the appointment of Judicial Members should be done in consultation with the Chief Justice of India. An undertaking was given in the Supreme Court that a Bill to make suitable amendments in the Act would be brought before Parliament as early as possible. The Central Administrative Tribunal had also started functioning in Benches in accordance with the above directions of the Supreme Court. As the writ petitions referred to above were coming up for hearing some time in January, 1986, the President promulgated the Administrative Tribunals (Amendment) Ordinance, 1986 on the 22nd January, 1986 so as to give effect to the assurance given in the Supreme Court and to make some other amendments found necessary in the administration of the Act.

2. The Ordinance provided, among other things, for the following matters, namely:—

(*a*) The concept of Judicial Member and Administrative Member was introduced in the Act, and a Bench of the Administrative Tribunal would consist of one Judicial Member and one Administrative Member instead of three member-Benches to be presided over either by the Chairman or by the Vice-Chairman. It was also provided that the appointment of a Judicial Member would be made after consultation with the Chief Justice of India. Suitable provisions had also been included in the Ordinance to regularise the existing appointment of Members as Judicial Members and Administrative Members.

(*b*) The jurisdiction of the Supreme Court in service matters under article 32 of the Constitution was preserved. The principal Act intended to confer this jurisdiction also on the Tribunal.

(c) A provision was included to designate, with the concurrence of any State Government, all or any of the Members of the Bench or Benches of the State Administrative Tribunal established for that State as members of the Bench or Benches of the Central Administrative Tribunal in respect of that State, and to designate, on receipt of a request from any State Government, all or any of the members of the Bench or Benches of the Central Administrative Tribunal functioning in that State as members of the Bench or Benches of the State Administrative Tribunal for that State.

(d) The jurisdiction of the Tribunal was also extended to persons who are governed by the provisions of the Industrial Disputes Act, 1947 without affecting the rights of such persons under that Act.

3. Subsequent to the promulgation of the Ordinance, a few doubts were expressed in respect of some of the provisions of the Act and the Ordinance. It is, therefore, proposed to include in the Bill a few clarificatory amendments, to make certain provisions included in the Ordinance retrospective from the date of establishment of the Central Administrative Tribunal, and to validate certain actions taken by the said Tribunal. The amendments included in the Bill have been explained in the memorandum attached to the Bill.

4. The Bill seeks to replace the aforesaid Ordinance and to include therein the aforesaid amendments.

NEW DELHI;
The 6th March, 1986.

P. CHIDAMBARAM.

Memorandum explaining the modifications contained in the Bill to replace the Administrative Tribunals (Amendment) Ordinance, 1986.

The Administrative Tribunals (Amendment) Bill, 1986, which seeks to repeal and replace the Administrative Tribunals (Amendment) Ordinance, 1986, proposes to make the following modifications, apart from modifications of a consequential or drafting nature, in the provisions contained in the said Ordinance:—

(*i*) Clause 2 of the Bill seeks to indicate in the long title that the Act was enacted in pursuance of article 323A of the Constitution.

(*ii*) As the Benches of the Central Administrative Tribunal had already started functioning from the date of their establishment by the constitution of Benches consisting of one Judicial Member and one Administrative Member in accordance with the directions of the Supreme Court, the amendments, included in the Ordinance for this purpose, are proposed to be given retrospective effect from the date of establishment of the Tribunal, *i.e.*, 1st November, 1985. The Benches of the said Tribunal had also exercised jurisdiction in respect of persons governed by the provisions of the Industrial Disputes Act, 1947, with effect from 1st November, 1985. Hence the amendment also is proposed to be given effect to from that date and a provision has been included to validate the actions taken by the Tribunal.

(*iii*) The establishment of certain Benches in a few places has also been challenged in a few writ petitions. To overcome the objections raised in these petitions, the provision regarding establishment of Benches has been redrafted to indicate the places where the Benches will be established and to make the provision effective retrospectively from 1st November, 1985 [*vide* clause 6 (g) of the Bill].

(*iv*) A doubt has been expressed as to whether the Central Administrative Tribunal will have jurisdiction in respect of the services in connection with the affairs of a Union territory. Although the expression "in connection with the affairs of the Union" would include services under the administration of a Union territory, it is proposed to make this clear by an amendment in section 14(1) of the Act [*vide* clause 11(d) of the Bill].

(*v*) It is also proposed to include a clarificatory amendment that the order of a Tribunal finally disposing of an application or appeal will not be called in question in any court, except by way of special leave petition in the Supreme Court [*vide* clause 18 of the Bill].

(*vi*) Appeals against many of the decrees, orders or judgments of subordinate courts in respect of service matters passed before the establishment of the Central Administrative Tribunal had not been

preferred after such establishment either to the High Courts or to the Central Administrative Tribunal in view of the doubts as to whether the appeal should be filed in the Tribunal or in the High Courts. It is proposed to provide that appeals against such decrees, orders or judgments may be preferred to the Central Administrative Tribunal within a period of ninety days from the date on which the amending Bill received the assent of the President, or from the date when the copies of the judgments were received whichever is later and, in respect of cases before any other Tribunal, within ninety days from the date of establishment of such Tribunals or from the date when the copies of the judgments were received, whichever is later. This amendment would also make it clear that the Administrative Tribunal will have the jurisdiction to entertain appeals from subordinate courts in respect of service matters [*vide* clause 21 of the Bill].

SUDARSHAN AGARWAL,
Secretary-General.